

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

ORDER

Plaintiff,

08-cr-87-bbc
12-cv-269-bbc

v.

COREY THOMAS,

Defendant.

On April 11, 2012, defendant filed a motion for post conviction relief under 28 U.S.C. § 2255, contending that his trial counsel had been ineffective and that he had been sentenced improperly as a career offender. Dkt. #1. After reviewing defendant's motion and the government's response, I denied the motion in an order entered on February 15, 2013. Dkt. #22. Defendant appealed unsuccessfully; this court's judgment was affirmed by the Court of Appeals for the Seventh Circuit on November 12, 2013. Dkt. #30.

On February 11, 2014, defendant filed a motion under Fed. R. Civ. P. 60(b), contending that the court had erred when it denied his § 2255 motion the year before. Dkt. #31. This motion was construed as a second attempt to challenge the legality of his sentence and denied because it was not accompanied by a certification by a panel of the court appeals that it contained newly discovered evidence or "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court." Dkt. #34.

Defendant filed a motion for reconsideration of this order, which was denied on February 26, 2014. Defendant appealed the denials of both motions, dkt. #35. The appeal is pending before the court of appeals.

Now defendant has filed another motion for reconsideration. Absent extraordinary circumstances, the district court should not consider, or reopen, § 2255 motions while an appeal is pending. United States v. Robinson, 8 F.3d 398 (7th Cir. 1993). Doing so would run the risk that two courts would be working on the same case at the same time. To avoid this possibility, district courts lose jurisdiction over a case once it is appealed. Therefore, this court lacks authority to rule on defendant's motion.

ORDER

Defendant's motion for reconsideration is DENIED for lack of jurisdiction.

Entered this 6th day of May, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge